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UNCLAS HARARE 002309

SIPDIS

NSC FOR SENIOR AFRICA DIRECTOR J. FRAZER  
LONDON FOR C. GURNEY  
PARIS FOR C. NEARY  
NAIROBI FOR T. PFLAUMER

SENSITIVE

E.O. 12958: N/A

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SUBJECT: RECUSAL OF JUDGE MUDDIES DAILY NEWS CASE

REF: (A) HARARE 2159 (B) HARARE 2132 and previous

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PROTECT ACCORDINGLY.

SUBJECT:

11. (SBU) SUMMARY: Administrative Court Justice Michael Majuru recused himself from the Associated Newspapers of Zimbabwe (ANZ) case on November 25 following reports that he was to be investigated for bias in the case. A Media and Information Commission (MIC) application to have the case removed from the Administrative Court to the Supreme Court effectively postpones consideration of the merits of ANZ's case indefinitely. END SUMMARY.
12. (SBU) According to a report in the government-controlled newspaper The Herald on November 25, MIC lawyer Mr. Johannes Tomana alleged that one of his clients told him November 24 that Majuru had told him that he was going to rule in favor of ANZ when the case before him, effectively allowing The Daily News (TDN) to resume publication. He also alleged that Majuru told him that he was not going to hear the case on the 24th as originally scheduled since there were certain papers that he needed from the MIC lawyers. Majuru did not respond to the allegations in court and simply recused himself when the case came up on November 25. The Director of the Civil Division of the Attorney General's office Mrs. Matandamoyo told lawyers from the Human Rights NGO forum in confidence that the judge had denied the allegations against him. She said that Majuru admitted that the person named was his relative and that he saw him on Sunday night but denied discussing the TDN case. Matandamoyo told the lawyers that she had worked with Majuru and considered him to be an exceptional judge -- dedicated and professional. She said she was disturbed by the allegations against him and had approached Tomana out of concern.
13. ANZ legal adviser Gugulethu Moyo told the Embassy November 25 that the MIC had filed an urgent application to the Supreme Court to have the case removed from the jurisdiction of the Administrative Court. Although the MIC has not yet filed its full legal argument, it is seeking an order stating that the application should be heard in the Supreme Court. ANZ will oppose the application in the Supreme Court. Although ANZ has eight other cases pending in the courts, this particular case is the only one in which a favorable ruling would ensure that TDN would resume publication. A definitive ruling is not expected by the time the courts close for the year on December 6, effectively throwing the case into next year. The courts will re-open on January 12.
14. COMMENT: The GOZ's actions continue a pattern of undermining the judiciary's independence, and serve as a message to those judges who continue to decide against the government. In addition, Justice Majuru's recusal deals a demoralizing blow to the TDN legal team. He had given ANZ its most important legal triumph to date when he ruled last month that TDN would be deemed to be registered and could begin publishing by November 30. Removal of the case to the Supreme Court may be justified under applicable law, but will play right into the hands of the government by further delaying the case and more likely placing it under government influence. Case assignment by the pro-government Chief Justice makes prospects for a favorable judgment slim in the Supreme Court. Even if the case remains in the Administrative Court, the presiding justice replacing Majuru will be under considerable official pressure to rule against ANZ. To some extent, the latest maneuvers signify nothing more than sound and fury, as the government gives no indication it will respect any decision permitting resumption of publication.
15. COMMENT (CONT'D): The government's actions are yet another exercise in Justice Holmes's adage: justice delayed

is justice denied. A final decision may never be reached, as the government may calculate that delays and associated financial bleeding will accomplish what it has not been able to accomplish in court: a formal closing of TDN.